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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,361	07/23/2003	Jeremy A. Davis	200210054-1	1224

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FORT COLLINS, CO 80527-2400

EXAMINER

RODRIGUEZ, WILLIAM H

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,361	<b>Applicant(s)</b> DAVIS, JEREMY A.	
	<b>Examiner</b> William H. Rodriguez	<b>Art Unit</b> 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,5,13,17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,13,17 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **FINAL REJECTION**

This office action is in response to the amendment and remarks filed 4/28/06.

#### ***Claim Objections***

1. Claim 19 is objected to because of the following informalities:

The recitation "the web" is presumed to be --the offset web-- for proper clarity.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 5, 13, 17 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 13 recite "an offset web". It is unclear with respect to what recited structural element the web is offset with. Is it offset with respect to the centerline of the tubes? Or is it offset with respect to the centerline of the pump assembly?, or is it offset with respect to another recited structural element?. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102 and 103***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

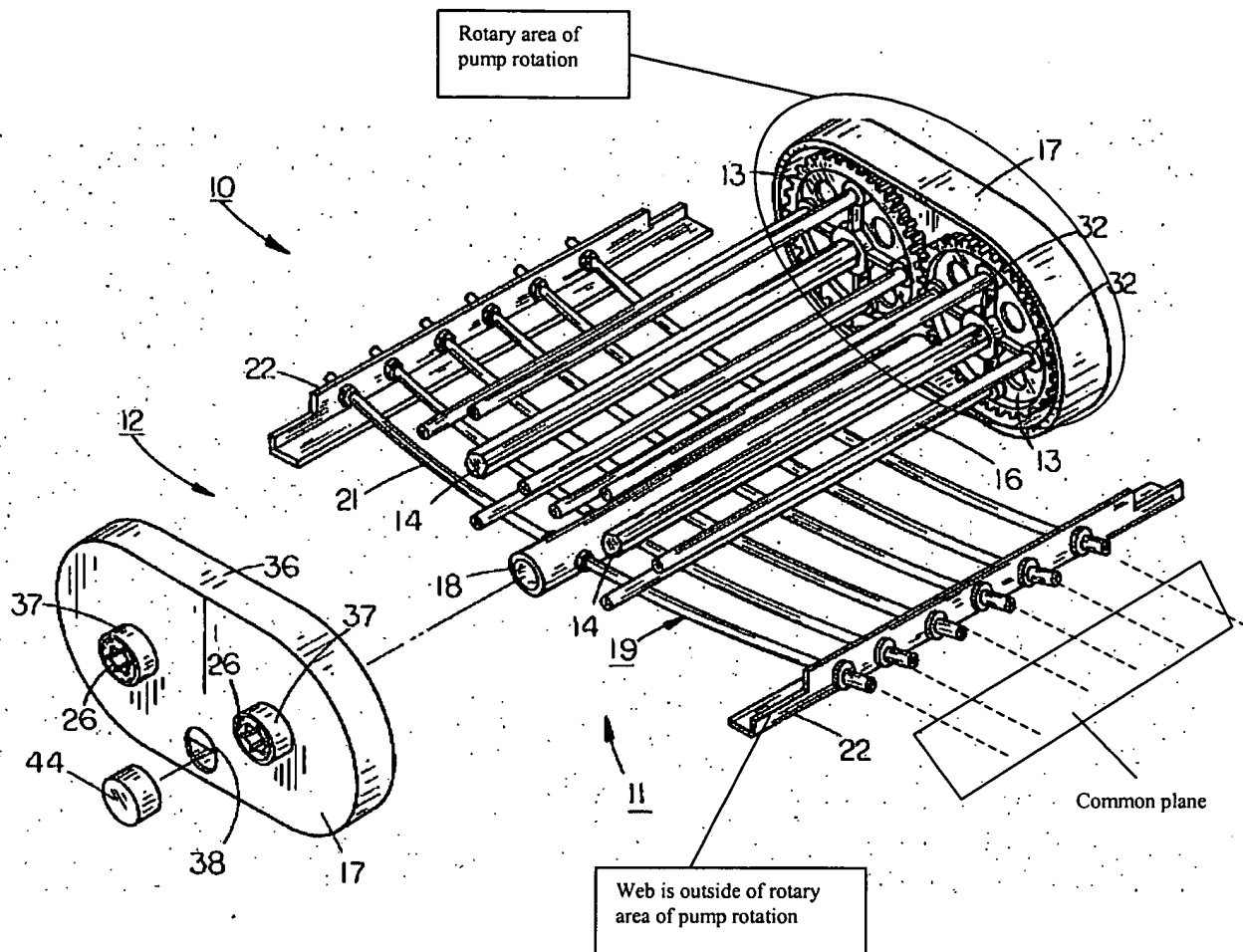
5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 5, 13, 17 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over **Schartz (US 4,522,570)**.

With regards to the word “**integral**”, the use of one piece construction instead of the structure disclosed in Schartz would be merely a matter of obvious engineering choice, which is not sufficient by itself to patentably distinguish the invention over an otherwise old device satisfying the structural limitations but comprised of several parts, as is the case here.

With regards to the word “**OFFSET**” in the claims, the addition of this word does not add any patentable weight to the claim because it does not help differentiate the claimed apparatus from a prior art apparatus satisfying the recited structural limitations, as is the case here. Also, see 112 rejections above as well.



With respect to claims 1 and 19, **Schartz** teaches a pump having a rotary portion 16 which compels the movement of a fluid by peristaltic compression of resilient tubing 19 containing the fluid, a tube component comprising a plurality of adjacent resilient tubes; a web 22 interconnecting the adjacent resilient tubes, the resilient tubes has a cross-sectional centerline occurring in a common plane, and the web interconnects the resilient tubes in an area outside of the common plane, the rotary portion of the pump includes a rotary area of pump operation, and the web is outside the rotary area of pump operation. See particularly Figure above.

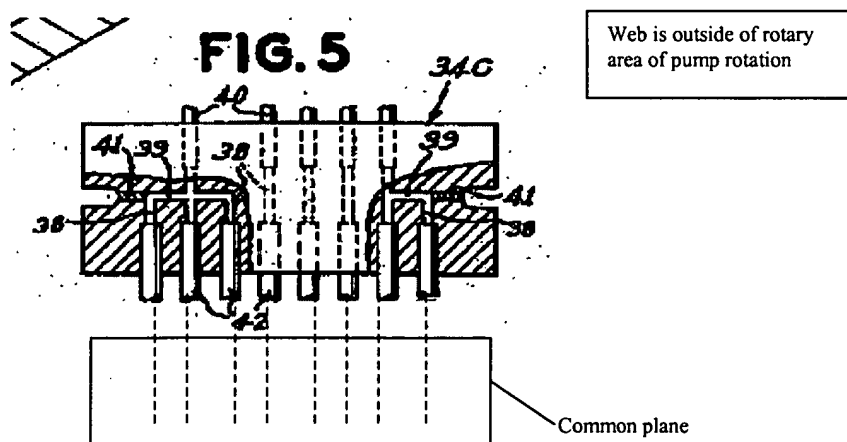
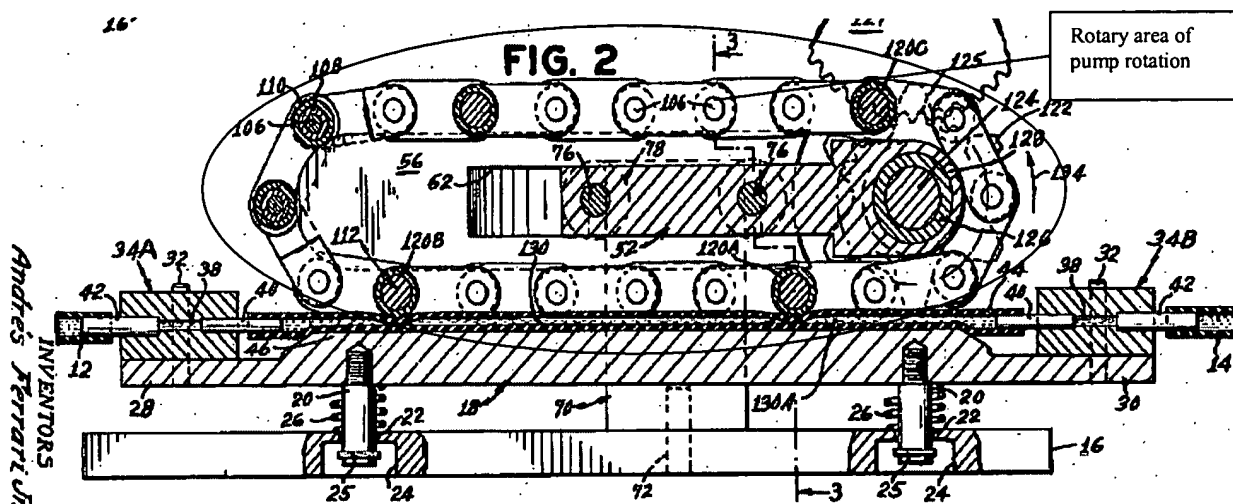
With respect to claim 5, **Schartz** teaches that the resilient tubes 19 are fabricated from an elastomeric plastic material (inherent for this type of pumps).

With respect to claim 13, **Schartz** teaches a method of assembling a pump having a rotary portion 16 which compels the movement of a fluid by peristaltic compression of resilient tubing 19 containing the fluid comprising the following: providing a plurality of adjacent resilient tubes, and interconnecting the adjacent resilient tubes with a web 22, providing a plurality of adjacent resilient tubes comprises providing each of the resilient tubes with a cross-sectional centerline occurring in a common plane, and interconnecting the adjacent resilient tubes with a web comprises interconnecting the resilient tubes in an area outside of the common plane, the rotary portion of the pump includes a rotary area of pump operation, and interconnecting the adjacent resilient tubes with a web comprises interconnecting the resilient tubes in an area outside the rotary area of pump operation.

With respect to claim 17, **Schartz** teaches that the resilient tubes 19 are fabricated from an elastomeric plastic material (inherent for this type of pumps).

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7. Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over **Ferrari et al. (US 2,865,303)**.



With regards to the word “**integral**”, the use of one piece construction instead of the structure disclosed in Ferrari would be merely a matter of obvious engineering choice, which is not sufficient by itself to patentably distinguish the invention over an otherwise old device satisfying the structural limitations but comprised of several parts, as is the case here.

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With regards to the word “**OFFSET**” in claims 1 and 13, the addition of this word does not add any patentable weight to the claim because it does not help differentiate the claimed apparatus from a prior art apparatus satisfying the recited structural limitations, as is the case here. Also, see 112 rejections above as well.

With respect to claim 1, **Ferrari** teaches a pump having a rotary portion 120 which compels the movement of a fluid by peristaltic compression of resilient tubing (44, 40, 42) containing the fluid, a tube component comprising a plurality of adjacent resilient tubes; a web 34C interconnecting the adjacent resilient tubes, the resilient tubes has a cross-sectional centerline occurring in a common plane, and the web interconnects the resilient tubes in an area outside of the common plane, the rotary portion of the pump includes a rotary area of pump operation, and the web is outside the rotary area of pump operation. See particularly **Figures 2, 5** above and column 4 lines 59-71 of **Ferrari**.

With respect to claim 13, **Ferrari** teaches a method of assembling a pump having a rotary portion 120 which compels the movement of a fluid by peristaltic compression of resilient tubing (40, 42, 44) containing the fluid comprising the following: providing a plurality of adjacent resilient tubes, and interconnecting the adjacent resilient tubes with a web 34C, providing a plurality of adjacent resilient tubes comprises providing each of the resilient tubes with a cross-sectional centerline occurring in a common plane, and interconnecting the adjacent resilient tubes with a web comprises interconnecting the resilient tubes in an area outside of the common plane, the rotary portion of the pump includes a rotary area of pump operation, and interconnecting the adjacent resilient tubes with a web comprises interconnecting the resilient

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tubes in an area outside the rotary area of pump operation. See particularly **Figures 2, 5** above and column 4 lines 59-71 of Ferrari.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1, 5, 13, 17 and 19 have been considered but are not persuasive for the following reasons:

The word "**OFFSET**" added in the claims does not add any patentable weight to the claim because it does not help differentiate the claimed apparatus from a prior art apparatus satisfying the recited structural limitations, as is the case with **Schartz** and **Ferrari**. Moreover, it is unclear with respect to what recited structural element the web is offset with. Is it offset with respect to the center-line of the tubes? Or is it offset with respect to the centerline of the pump assembly?, or is it offset with respect to another recited structural element?. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Also, see 112 rejections above as well.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contact information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Rodríguez whose telephone number is 571-272-4831. The examiner can normally be reached on Monday-Friday 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy S. Thorpe can be reached on 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 5/21/06  
William H. Rodríguez  
Primary Examiner  
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